
(1996) 10 KL CK 0045

In the High Court Of Kerala

Case No : Income-tax Reference No. 60 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Programme for Community Organisation

RESPONDENT

Date of Decision : 25-10-1996

Acts Referred:

Income Tax Act, 1961 — Section 11, 11(1), 2(45)

Citation : (1997) 141 CTR 502 : (1997) 228 ITR 620

Hon'ble Judges : V.V. Kamat, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; C. Kochunni Nair and Dale P. Kurien, for the Respondent

Judgement

V.V. Kamat, J.—In this reference the assessment year 1978-79 gets concerned and that too also for a limited purpose of application of the statutory provisions of Section 11(1)(a) of the Income Tax Act, 1961, again for a limited purpose of determining the amount for grant of exemption at 25 per cent. In other words, the question is whether the amount for grant of exemption at 25 per cent, should be the income of the trust or should be the total income determined by the Income Tax Officer for the purpose of assessment.

2. The questions referred for consideration are :

"1. Whether, on the facts and in the circumstances of the case, and on an interpretation of the relevant provisions of the Income Tax Act, the assessee is entitled to exemption at 25 per cent, on Rs. 2,57,376 or only on Rs. 87,010 ?

2. Whether, on the facts and in the circumstances of the case, should not the Tribunal have accepted the view of the Revenue expressed in the circular, the same being consistent with the relevant provisions of the Income Tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, and also considering the scope of the earlier order of the Commissioner of Income Tax (Appeals) dated November 18, 1983, the Tribunal is right in law in holding that

"the Commissioner of Income Tax (Appeals) has rightly interfered with the order of the Income Tax Officer" ?"

3. The questions arise in the following situations. The assessee is an association of persons duly registered u/s 12A of the Income Tax Act, 1961. With regard to the question of assessment for 1978-79, the Income Tax Officer determined the total income at Rs. 87,010 for the purpose of levy of Income Tax. Initially, no exemption of any kind was granted u/s 11(1)(a) and, therefore, the first appellate authority-- Commissioner of Income Tax (Appeals) --was approached and the assessee obtained a direction to grant exemption u/s 11(1)(a) at 25 per cent. It was in this process the Income Tax Officer granted exemption at 25 per cent, of the total income determined by him-Rs. 87,010 granting exemption of Rs. 21,752. Thereafter, the assessee preferred a rectification application before the Income Tax Officer pointing out that it is not the total income determined which should be the basis of grant of 25 per cent, exemption, but it is the income of the trust with reference to the provisions of Section 11(1)(a) of the Income Tax Act, 1961, that would be the amount for grant of 25 per cent, thereof as exemption. The Income Tax Officer did not entertain the rectification application and recorded his inability. The assessee had to approach the Commissioner of Income Tax (Appeals) for a limited controversy. The assessee contended that the total receipts are Rs. 2,57,376 and in accordance with the statutory provisions of Section 11(1)(a), 25 per cent, thereof is not to be treated as the income of the trust and it is only after deducting 25 per cent, thereof (Rs. 64,344) one has to proceed further to determine the total taxable income. The first appellate authority considered this situation. In the process of reasoning, the authority observed that the concept of total income is of a very restricted applicability and it would only refer to that income as computed u/s 2(45) of the Income Tax Act. The authority observed that the total income, a concept to be found in Section 2(45) of the Act, would not control the statutory provisions of exemption, illustratively u/s 11(1)(a) of the Act, because the words "income from property" appearing in Section 11(1)(a) are of a wider import to include all other receipts constituted and understood in a commercial sense, of going to convey the income of the association claiming for exemption. In the process of reasoning, the said authority also has drawn strength from the circular dated June 19, 1968 (annexure "F"), drawing distinction between the total income and the income of the trust. It is observed that the association, being a chargeable one, it is found that the books of account disclosed total receipts of donations or contributions to the tune of Rs. 2,57,376. It is observed that the whole of this amount would have to be understood and consequently treated as the income of the trust which would be the basis for calculation of 25 per cent, --the resultant amount to which the trust could be understood to be entitled to exemption. The first appellate authority, therefore, took the view that the concept of income and relationship of 25 per cent, in connection thereto could be understood as applying only to the gross contribution or voluntary donations received by the trust during the year under consideration and the limit of 25 per cent, thereof could apply for the

purposes of Section 11(1)(a) of the Income Tax Act, 1961, only to such receipts to be understood as the income of the trust. Accordingly, holding those receipts amounting to Rs. 2,57,376 and 25 per cent, thereof amounting to Rs. 64,344, the appellate authority corrected the proceedings of the Income Tax Officer by ordering him to exempt from the total income 25 per cent, of the income of the trust, the amount to be taken to be Rs. 64,344 and not Rs. 21,752 as was ordered by him.

4. The Income Tax Appellate Tribunal, in the first instance (see paragraph 4) has taken up for consideration the statutory language of Section 11(1)(a) of the Income Tax Act, 1961. For a ready reference it would be convenient to reproduce the same :

"11. (1) (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India ; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent, of the income from such property."

5. The Tribunal has held that it would be clear that the income that is not to be included for the purpose of computing the total income would be the amount expended for such purpose in India and 25 per cent, of the total receipts which is allowed to be carried forward. The Tribunal has accordingly dismissed the appeal of the Revenue.

6. At the outset, the statutory language of Section 11(1)(a) of the Income Tax Act, 1961, relates to the income derived by the trust from property. The trust is required to be wholly for charitable or religious purposes, and the income is expected to have relation to the extent to which such income is applied to such purposes in India. It is thereafter the statutory provision proceeds further that such income is not to be understood to be in excess of 25 per cent, of the income from such properties. In other words, the very language of the statutory provision under consideration sets apart 25 per cent, of the income from the source of property with reference to the extent to which such income is applied for such purposes, charitable or religious. In other words, for the purpose of Section 11(1)(a) of the Act, the income in terms of relevance would be the income of the trust from and out of which 25 per cent, is set apart in accordance with the spirit of the statutory provision.

7. Reading of the circular dated June 19, 1968, it would be a condition by way of a clarification. The circular relates to the subject in the context. It contains instructions regarding "income" required to be applied for charitable purposes. Even the Board of Revenue has understood that it would be incorrect to assign to the word "income" used in Section 11(1)(a) of the Act, the same situation of understanding as is available from the expression "total income" which is used in Section 2(45) of the Act. It is specified that in the case of a business undertaking

held under a trust, its income disclosed by the account will be eligible for exemption u/s 11(1) and the permitted accumulation of 25 per cent, will also be calculated with reference to this income.

8. Learned senior tax counsel submitted that the last paragraph of the circular makes out a different situation and, therefore, the circular as a whole will have to be read and taken into consideration in the context. To appreciate this submission it is necessary to reproduce the last paragraph of the said circular which is as follows :--

"Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word "income" should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. . . . The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 75 per cent- of the latter, if the trust is to get the full benefit of the exemption u/s 11(1)."

9. The above paragraph, if fully read, does not alter the situation in any way. As seen from the above, when the trust derives income, it says that the word "income" should be understood in its commercial sense, i.e., book income. In other words, the Department requires its officer to understand the income of the trust with reference to the book income, after adding back the items stated therein. It is thereafter that we see that whatever may be the position, the amount spent or applied for the purposes, it is clarified, should not be less than 75 per cent, of the latter if the trust is to get the full benefit of the exemption u/s 11(1). In our judgment, the statutory provision makes it abundantly clear that in regard to a trust which is entitled to get the full benefit of exemption of Section 11(1) of the Act, its income with reference to the head under consideration would have to be understood only at 75 per cent, thereof, leaving 25 per cent, altogether at that stage itself. In this sense of the situation, the Central Board of Revenue also has understood the situation in the context of the statutory language of Section 11(1)(a) of the Act and not otherwise. This means that when the situation is established that the trust is entitled to the full benefit of exemption u/s 11(1), the said trust is to get the benefit of 25 per cent, and this 25 per cent, has to be understood as that of the income of the trust under the relevant head of Section 11(1)(a) of the Act.

10. Learned senior tax counsel brought to our notice a decision of the Andhra Pradesh High Court, Commissioner of Income Tax Vs. Trustee of H.E.H. The Nizam's Supplemental Religious Endowment Trust, . In particular, learned senior tax counsel wanted to draw strength from question No. 2 to be answered in the said judgment. The question relates to the situation as to whether the income, as per the books of the trust has to be considered for the purposes of Section 11 of the Income Tax Act for the assessment year in question. Not only that, going

through the judgment we find that the questions before the Andhra Pradesh High Court were altogether different to the extent that the situation was relating to the mode of determination and requirement of issuance of notice in regard thereto, but it would be also seen that the court observed that the position is to be ascertained from the books of account of the concerned trust. Reading the judgment under consideration we find that what has been ruled would not provide us any kind of help even by way of a support.

11. In fact the statutory language of Section 11(1)(a) is more than clear and even the Central Board of Revenue has also considered the situation and the first appellate authority and the Tribunal both have considered the situation in accordance therewith.

12. Taking into consideration all the facts and circumstances, the situation needs no disturbance of any kind. For the above reasons, we answer question No. 1 to the effect that the assessee is entitled to exemption of 25 per cent, on Rs. 2,57,376 and not on Rs. 87,010. We answer question No. 2 in the affirmative. Both the questions are answered against the Revenue and in favour of the assessee.

13. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, for passing consequential orders.